

No.22,222 ✓

IN THE  
United States Court of Appeals

FOR THE NINTH CIRCUIT

MARIA GOGUE CANDASO, as Administratrix  
of the Estate of Prudencio Rivera Gogue,  
deceased,

*Appellant,*

VS.

JOAQUIN V. E. MANIBUSAN, as Administra-  
tor of the Estate of Isabel Rivera Gogue,  
deceased,

*Appellee.*

**APPELLANT'S OPENING BRIEF**

On Appeal from the District Court of Guam.

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**JUDICIAL STATEMENT.**

Jurisdiction of this action is vested in the District Court of Guam and on appeal in the United States Court of Appeals for the Ninth Circuit by Title 48, §1424, United States Code, and by the provisions of §§1291 and 1294, Title 28, United States Code.

**STATEMENT OF THE CASE.**

Maria Gogue Candaso, as Administratrix of the Estate of Prudencio Rivera Gogue, filed an action to

quiet title on three parcels of land claimed by the Prudencio Gogue Estate (C.T. 1).<sup>\*</sup> Claimants to the property named as defendants are Joaquin V. E. Manibusan, as Administrator of the Estate of Isabel Rivera Gogue, and defendants Gregory, grantees under a deed from one of the heirs of the Isabel Rivera Gogue Estate. A third party complaint against Jesus Torres named as third party defendant is irrelevant to this appeal.

Defendant Manibusan answered (C.T. 11) generally denying the allegations of the complaint and raising no affirmative defenses. Defendants Gregory answered (C.T. 9) alleging a conveyance to them from Vicente Gogue, a son of Isabel Rivera Gogue, and raising no affirmative defenses.

After trial, the District Court of Guam dismissed plaintiff's complaint holding that title to the three disputed parcels of property was in the Estate of Isabel Rivera Gogue (R.T. 94). From this judgment, plaintiff has appealed.

#### **STATEMENT OF FACTS.**

Isabel Rivera Gogue had three children; Prudencio, Vicente, and Joaquina. In 1915, Isabel Rivera Gogue conveyed Lots 297 Soyafe, 366 Soyafe, an Asleno parcel, and 250 Aang, all in the Municipality of Merizo, Guam, to her son Prudencio. Prudencio died July 12, 1920; Joaquina died in 1965, and Vi-

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<sup>\*</sup>(C.T. refers to Clerk's Transcript and R.T. to Reporter's Transcript.)



cente survives (R.T. 79). In 1964, Vicente, though then the administrator of his mother's estate which had not been closed, purported to convey one of the lots in question to defendants Gregory. He did this individually and not as administrator of the estate and the sale was never approved by the Island Court.

This action thereafter arose when the Gregorlys went into possession in 1964. Plaintiff is the descendent of Prudencio and heir to his estate and the defendants are heirs to the estate of Isabel Rivera Gogue.

At the trial a deed dated August 3, 1915 from Isabel Rivera Gogue, as grantor, to Prudencio Gogue, as grantee, was proved and admitted into evidence without objection (R.T. 24). The deed was recorded with cautionary instructions on August 9, 1915 (C.T. 7). The recording was made definite on June 2, 1926 (Plaintiff's Exh. 2). There was testimony that taxes had been paid from 1953 to 1966 but no definite evidence was introduced as to who paid them, nor were the tax receipts introduced as evidence (R.T. 57-59). There was some evidence that Joaquina Gogue Flores and her husband had paid some taxes but these taxes were not necessarily paid for the estate of Isabel Rivera Gogue any more than they were paid for the estate of Prudencio Gogue, who was a brother of Joaquina (R.T. 80). Adverse possession on the part of defendants was neither pleaded nor proved.

**SPECIFICATIONS OF ERROR.**

1. The District Court of Guam erred in holding that the deed from Isabel Rivera Gogue to Prudencio Gogue was void and of no effect.

2. The District Court of Guam erred in concluding that the voluntary payment of taxes with no other elements of adverse possession may effect title to land when no assertion of adverse possession was made by defendants.

3. The District Court of Guam erred in holding and deciding that under the applicable laws of Guam, the reservation of recording had any bearing or effect on the right of Isabel Rivera Gogue to convey her interest in real property as done by her deed in 1915.

**ARGUMENT.****I.**

**LOTS 250, 297 AND 336 WERE CONVEYED BY VALID DEED AND ANY RESERVATION IN THE RECORDING COULD HAVE NO EFFECT ON GRANTEE'S INTEREST AS AGAINST THE CLAIMS OF THIRD PARTIES.**

A warranty deed, duly witnessed, acknowledged, and approved was executed by Isabel Rivera Gogue as grantor on the 3rd day of August, 1915, in favor of her son Prudencio. This deed was approved by the Governor of Guam with cautionary notices at the request of Prudencio and recorded in the Department of Land Management, Government of Guam (Plain-



tiff's Exh. 1). The court nevertheless held that the deed was invalid and conveyed no interest to Prudencio because of the cautionary notice. Even if the court was correct on that point, it is clear that the cautionary notices were removed and the document definitely recorded on the 2nd day of June, 1926 (Plaintiff's Exh. 2). The court's conclusion that the cautionary notices invalidated the deed was contrary to any known rule of law. The cautionary notice was undoubtedly inserted to warn any prospective third party purchaser from Prudencio and could have no effect on the grant between mother and son.

It is further apparent that there were four lots referred to in the original 1915 deed. Lots 297 and 336 were not denied recordation for any reason. A tract known as Aang, or Lot 250, was denied recordation on the cautionary basis for the reason that the grantor was not shown to be the owner in the registry at the time of her deed (R.T. 46). The fourth parcel called Asleno was also included in the deed but it was undefined. Because of that there was a cautionary instruction as to the Asleno lot also.

Since the court refused to give the deed any effect whatsoever and based its decision upon the cautionary instructions, it seems that the court was entirely wrong as to Lots 297 and 336. Appellant also contends that the court was wrong as to Lot 250. Assuming that the grantor showed no record title as of the

time of her grant, the deed nevertheless operated to subsequently pass title. Defendants contend of course that the estate of Isabel Rivera Gogue owns all four parcels. §1106 of the Guam Civil Code provides that where a person purports by a proper instrument to grant real property in fee simple and subsequently acquires any title or claim of title, the same passes by operation of law to the grantee or his successors. It has also been held that a deed purporting to convey a fee simple has, as a matter of law, the same effect as if it contained an express provision that the grantor conveyed all the estate he then possessed or he might thereafter acquire. *Younger v. Moore*, 155 Cal. 767, 103 P. 221, 15 Cal. Jur. 2d 619-620.

## II.

### **RECORDATION OF A DEED IS UNESSENTIAL TO CONVEY TITLE AND EVEN IF THE DEED HAD BEEN IMPROPERLY RECORDED, THE GRANTOR IS ESTOPPED TO DENY THE LEGAL EFFECT OF THE DEED.**

An unrecorded conveyance is valid against all the world except subsequent purchasers or encumbrancers in good faith for a valuable consideration whose instrument is first recorded. Guam Civil Code, §§1214 and 1217.

While the recordation of a deed gives rise to a rebuttable presumption that it was duly executed and delivered, recordation is not essential in order that an instrument may be operative as a deed. *Hunter v.*

*Watson*, 12 Cal. 363; *Chaffee v. Sorensen*, 107 C.A. 2d 284, 236 P. 2d 851.

### III.

#### THE DEFENDANT ESTATE HAS NO CLAIM OF RECORD WHATSOEVER.

The only claim of record the defendant estate had of any sort was the two maps dated 1934 which were introduced into evidence as Plaintiff's Exhibits 3 and 4. However, the court did not think that these maps were in any point important and certainly did not base its decision on these maps. Mrs. Joaquina Gogue Flores, a daughter of Isabel Rivera Gogue, had signed the maps at the request of the Navy as to three of the parcels. In this connection the court said:

“But I wouldn't think that merely signing the map would be any proof of title.” (R.T. 43)

The court is correct in this and since there is no documentary proof of title other than the deed of 1915, the only claim that the heirs of Isabel Rivera Gogue have is that they somehow acquired title because they alleged they paid some taxes. It is not alleged that the estate paid the taxes but only one of the heirs, Joaquina Gogue Flores paid taxes. It is just as conceivable that Joaquina, being the sister of Prudencio, paid the taxes on his behalf. It is also conceivable that Mrs. Flores took advantage of the fact that Prudencio died in 1920 and the fact also

that the tax office apparently failed to change the name on the tax records.

#### IV.

#### **THE MERE PAYMENT OF TAXES IS INSUFFICIENT TO VEST TITLE TO PROPERTY.**

Where there has been no tax sale, and the taxes have been paid on property by a party other than the owner, and the owner brings an action to quiet title, unless the payment of the taxes grew out of or was necessarily involved in the subject matter of the controversy, the person who paid the taxes is not entitled to reimbursement as a condition of quieting title. *Stanley v. Westover*, 93 C.A. 97, 269 P. 468. One who pays taxes under a mistaken belief in his ownership is a volunteer and is not entitled to a judgment for taxes. *McMillan v. O'Brien*, 219 Cal. 775, 29 P. 2d 183, 91 A.L.R. 383.

#### V.

#### **DEFENDANT ESTATE NEITHER PLEADED NOR PROVED ADVERSE POSSESSION.**

No showing was made whatsoever of the essential elements for adverse possession on the part of defendant. Further, where family relationship exists between the owner and the occupant of property, the possession of the occupant will not be considered



adverse in the absence of a positive showing of the assertion of the hostile claim and notice thereof to the owner. *Rix v. Horstmann*, 93 Cal. 502, 29 P. 120. Further, no possession of any kind was proved by defendants. One claiming a right to property by adverse possession must establish his right either by a claim of title founded upon possession, but without color of title, or upon possession by color of title founded upon a written instrument, judgment or decree. Guam Code of Civil Procedure, §322. Actual possession cannot be shown for purposes of attaining title by adverse possession by merely showing the payment of taxes, or occasional acts such as the cutting of timber, hay, grass or weeds. 2 Cal. Jur. 2d 541.

## VI.

### **THE MARKETABLE TITLE ACT, IF APPLICABLE, AIDS PLAINTIFF BUT NOT THE DEFENDANTS.**

Some reference was made to the Marketable Title Act by counsel for defendant and by the court (C.T. 13) (R.T. 45). The Marketable Title Act, Guam Civil Code, §§1218 et. seq., aids the plaintiff and not the defendant estate. §1218.2 provides that a person shall be deemed to have the unbroken chain of title to an interest in land if he is in possession and has record title prior to January 1, 1935. Anyone opposing the claim must have filed a claim before August 1, 1960. Obviously this was not done by defendants and since they have no record title, the Act does not assist

them. Plaintiff is assisted by the Act, however, and conclusively so. He and his successors had a good and valid record title and were presumptively in possession. Guam Code of Civil Procedure, §321.

## VII.

**THOUGH DEFENDANTS NEITHER CITED NOR PRESENTED ANY PRIOR LAWS OF GUAM, THE COURT APPARENTLY BASED ITS DECISION ON ITS UNDERSTANDING OF THOSE LAWS WITHOUT ANY CITATIONS. EVEN IF WE ASSUME THAT THE COURT'S UNDERSTANDING OF THE PRIOR GUAM LAW IS CORRECT, THE DECISION IS STILL WRONG.**

The court apparently based its decision on its understanding of prior Guam law that it was the policy of the naval government to prohibit transfer of land to any person who was not a Guamanian (R.T. 92). The court then goes on to conclude that the cautionary instructions originally attached to the deed had the effect of voiding the deed. The court also went on to conclude that there was no indication that Prudencio ever attempted to exercise dominion over the properties or the rights of ownership. No citation is given for that statement and it is submitted that under present Guam law and prior Guam law, no such conclusion is justifiable.

Appellant knows of no such Guam law to justify those conclusions, and as this court has held in *Perez v. Herrero Estate*, 333 F. 2d 1014, 1015 (9th Cir.



1964), one resorting to the prior law of Guam should indicate what it is by appropriate citation. In the orderly administration of justice, this should be a requirement and the burden should be on defendants to show what prior laws defeated plaintiff's deed. Since this has not been shown, it is submitted that the deed is good and valid on its face and conveyed good title to the plaintiff.

### CONCLUSION.

A prima facie case of title was established by a deed to plaintiff from one under whom his adversary claims, duly signed, acknowledged, and recorded. *McGorray v. Robinson*, 135 Cal. 312, 67 P. 279. A conclusive statutory presumption exists on the truth of the facts recited in a written instrument between the parties thereto. Guam Code of Civil Procedure, §1962(2). The production of a deed in a quiet title action by the grantee carries with it the presumption that the deed was duly delivered to him. *Cox v. Schnerr*, 172 Cal. 371, 156 P. 509.

Although the court in its decision tends to rely upon such theories of law as "abandonment," "failure to exercise dominion," and "payment of taxes by another," the findings of fact do not contain any references relative to these legal theories. The findings of fact hold only that the deed to Prudencio was denied recordation and was therefore void and that

the deed conveyed no property to Prudencio. It is, therefore, submitted that the judgment of the District Court of Guam should be reversed with instructions to enter judgment in favor of plaintiff.

Dated February 1, 1968, at Oakland, California.

Respectfully submitted,

BARRETT, FERENZ, TRAPP & GAYLE  
By W. SCOTT BARRETT

*Attorneys for Appellant*

**CERTIFICATE OF COUNSEL.**

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules. *and 39*

W. SCOTT BARRETT,  
*Attorney for Appellant*



# **APPENDIX**





**APPENDIX.**

Table of Exhibits pursuant to Rules 18(2) (f) :

No.	Offered	Received	Description
1	17	24	Copy, 1915 Deed
2	17-29	34	Copy, Recordation Estate No. 22, 85
3	29	43	1934 Map, Re Lots 297, 336
4	31	43	1934 Map, Re Lot 250
A	75	76	Decision, Probate Case 78-64, 9-9-66

